

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

EDWARD T. BUFORD, III
Respondent

Case Nos.: I-00-60006
I-00-60024

DECISION AND FINAL ORDER

I. Introduction

On July 11, 2000, the Government personally served a Notice of Infraction (No. 00-60006) upon Respondent Edward T. Burford, III, alleging that he had violated D.C. Code §§2-3310.3(d) and 2-3310.2, both of which prohibit the use of certain titles or other descriptions of services by persons who are not authorized to practice a health occupation. Section 2-3310.3(d) contains specific prohibitions with respect to the practice of dentistry, while § 2-3310.2 is a general prohibition applicable to all health professions.¹ The Government sought a fine of \$500.00 for each infraction.

¹ The Notice of Infraction incorrectly describes § 2-3310.3(d) as forbidding the “unlicensed practice of dentistry.” That section, however, forbids persons who are not authorized to practice dentistry to use titles such as “dentist” or descriptions of services such as “dentistry” with the intent to represent that they practice dentistry. It does not forbid actual unlicensed practice. Prohibitions against unlicensed practice are found in D.C. Code §§ 2-3305.1 and 2-3310.1, but the Government did not pursue a case against Respondent under either of those provisions.

Respondent did not file an answer to the Notice of Infraction within fifteen days after service as required by D.C. Code § 6-2712(e). Accordingly, on August 7, 2000, this administrative court issued an order finding Respondent in default and assessing the statutory penalty of \$1,000.00 required by D.C. Code § 6-2704(a)(2)(A). On August 24, 2000, the Government served a second Notice of Infraction (No. 00-60024) on Respondent. Respondent then filed a timely plea of Admit with Explanation, together with a request for suspension or reduction of the fine.

On October 6, 2000, this administrative court issued an order permitting the Government to reply to Respondent's plea and request. The Government filed a reply on October 16, 2000.

II. Summary of the Evidence

Respondent states that on March 14, 2000 he mailed the proper forms and the necessary fees to renew his license to the contractor that has been hired by the Office of Professional Licensing to process renewals of dental licenses. On August 1, 2000, he received a notice from the contractor that his March 14 check had been returned for insufficient funds. Respondent claims that he was unaware of any problems with the renewal of his license until that time. He admits that he received the first Notice of Infraction on July 11, 2000, but states that he believed it was unfounded because he had submitted all the necessary documents to renew the license. He argues that the contractor should have acted more promptly in notifying him of any problems

with the renewal. He also states that he did not respond to the first Notice of Infraction because he believed that he could show up on the pre-scheduled hearing date indicated on that document.

The Government responds that Respondent's license expired on December 31, 1999, and that his March 14 attempt to renew the license was untimely. Moreover, the Government asserts that Respondent showed the inspectors his check ledger during their visit to his office on July 11. The inspectors state that the letters "NSF" (presumably an abbreviation for "Not Sufficient Funds") were written in the ledger next to the entry for the check that Respondent had sent for his renewal, even though Respondent said that the check had not cleared as of that date.

III. Findings of Fact

1. Respondent's plea of Admit with Explanation establishes that he violated D.C. Code §§ 2-3310.3(d) and 2-3310.2.
2. Respondent's license to practice dentistry expired on December 31, 1999, and he did not have a license to practice dentistry from January 1, 2000 through at least August 1, 2000.
3. From January 1, 2000 to at least August 1, 2000, Respondent used the title "Dentist" and/or other descriptions of his services without having a valid license to practice dentistry.

4. Respondent's written explanation, dated September 8, 2000, does not state whether Respondent had renewed his license by that date. It is not known whether or when Respondent has renewed his license.
5. It is undisputed that Respondent's license to practice dentistry expired on December 31, 1999, but Respondent did not attempt to renew the license until March 14, 2000. Respondent has not explained why he waited so long to renew his license.
6. Respondent attempted to renew his license on March 14, 2000 by sending the necessary forms and a check for the applicable fee to the contractor authorized to process the renewal of dental licenses.
7. The bank did not honor Respondent's March 14, 2000 check for the renewal fee due to insufficient funds in Respondent's account. Based upon the Government's unrefuted statement, Respondent was aware by July 11 that there were insufficient funds in his account to cover the check.
8. Respondent did not receive notice of the non-renewal of his license from the contractor until August 1, 2000, when the contractor informed him that his check had been returned due to insufficient funds. There is no explanation for the contractor's delay in communicating with Respondent.
9. Respondent believed that he did not need to answer the first Notice of Infraction, but instead could appear at the pre-scheduled hearing on August 30, 2000. That belief was unreasonable in light of the clear instructions on the Notice of Infraction, which state: "WARNING: Failure to respond . . . to this Notice within 15 days of the date of

service will result in the assessment of a penalty equal and in addition to the amount of the fine.”

IV. Conclusions of Law

1. Respondent is charged with violating D.C. Code §§ 2-3310.2 and 2-3310.(d), both of which prohibit the use of certain representations by unlicensed health professionals. Section 2-3310.3(d) is the more specific of the two provisions. It prohibits any person from using the words or terms “dentistry,” “dentist,” “D.D.S.” or certain other terms or descriptions of services with the intent to represent that the person practices dentistry. Section 2-3310.2 is a more general prohibition. It forbids any representation to the public, “by title, description of services, methods or procedures, or otherwise” that a person is authorized to practice any health occupation unless that person is licensed or otherwise authorized to practice a health occupation. Dentistry is included within the statutory definition of a “health occupation.” D.C. Code § 2-3301.1(7). Respondent’s plea of Admit with Explanation establishes that he used one or more titles or descriptions of his services in violation of both § 2-3310.3(d) and § 2-3310.2.²

² It conceivably could be argued that Section 2-3310.3(d) is a lesser included offense of § 2-3310.2, and, therefore, that separate penalties can not be imposed for violating both sections. It may be, however, that Respondent made at least two different prohibited misrepresentations and that the Government is seeking a penalty for each misrepresentation, charging one misrepresentation as a violation of § 2-3310.3(d) and the other as a violation of § 2-3310.2. Respondent’s plea of Admit with Explanation is an admission that he violated both sections, and he does not argue that he should have been charged only under one provision. Accordingly, the

2. Respondent does not deny using titles or descriptions of services that lawfully can be used only by those who are licensed to practice dentistry. Instead, he argues that he reasonably believed that he had a valid license because the contractor did not notify him of the non-renewal of his license until August 1. The contractor's unexplained delay does not excuse Respondent's failure to renew his license on time. His first attempt to renew occurred more than two months after his previous license had expired, and Respondent has not explained that delay. In addition, Respondent himself must shoulder the blame for paying his renewal fee with a check drawn on insufficient funds, particularly because he has not explained why he did so. Moreover, the entry in the check ledger demonstrates that Respondent knew that there were insufficient funds to cover the check well before he received the contractor's notice and there is no evidence that Respondent took any action to correct the problem. Thus, the evidence shows that Respondent knowingly remained in violation of the applicable statutes for a substantial period of time. The contractor's late notice had nothing to do with his failure to renew the license between January 1 and March 14, nor did it excuse his failure to renew once he learned that the check was not honored (by July 11 at the latest). Respondent's reliance upon the late notice from the contractor shows that he has not accepted responsibility for his violations.
3. The record also contains no evidence of prompt efforts by Respondent to correct the violations, as his September 8 filing does not state that he has renewed his license.

legal issue of whether the same conduct can constitute a violation of both sections is not presented in this case.

4. Because the contractor's delay does not excuse Respondent's unexplained failures to renew his license and because there is no evidence of either acceptance of responsibility or prompt correction of the violations, there is no basis to suspend or mitigate the proposed fines of \$500.00 for each offense committed by Respondent.
5. The Civil Infractions Act, D.C. Code § 6-2712(f), requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it on time. If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fines must be imposed. Because Respondent's basis for not filing a timely response to the Notice of Infraction is unreasonable and is directly contrary to the instructions on the Notice of Infraction, Respondent has failed to satisfy the good cause requirement of D.C. Code § 6-2712(f). Therefore, no suspension or reduction of the separate \$1,000.00 penalty imposed by this administrative court's order of August 7, 2000 is authorized. Respondent remains liable for the full amount of that penalty as required by D.C. Code §§ 6-2704(a)(2)(A) and 6-2712(f).

V. Order

Based upon the above findings of fact and conclusions of law, and the entire record in this matter, it is, this _____ day of _____, 2000:

ORDERED, that Respondent shall cause to be remitted a single payment totaling **TWO THOUSAND DOLLARS (\$2,000.00)** in accordance with the attached instructions within

twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's license or permit pursuant to D.C. Code § 6-2713(f).

/s/ **12-13-00**

John P. Dean
Administrative Judge